INTERACTIVE MEDIA ENTERTAINMENT AND GAMING ASSOCIATION, INC. v. ATTORNEY ... THE UNITED STATES Doc. 12 Att. 10

- INTERNET INDUSTRY -

INTERACTIVE GAMBLING

INDUSTRY CODE

**A CODE FOR INDUSTRY CO-REGULATION
IN THE AREA OF INTERNET GAMBLING CONTENT
PURSUANT TO THE REQUIREMENTS OF THE
*INTERACTIVE GAMBLING ACT 2001***

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Internet Industry Association
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1. Preamble

1.1 The Internet Industry Association (IIA) recognises that Parliament intends, with the passage of the *Interactive Gambling Act 2001* (IGA), to limit access by Australians to some types of gambling sites on the Internet.

1.2 The IIA further recognises that the law requires Internet service providers (ISPs) to assist, within the capacity of available technologies, in providing a means to prevent access by users to certain Internet content.

1.3 In relation to the prevention of access to prohibited Internet gambling content, supervision by responsible adults remains the effective means of protection, particularly in the case of Internet use by children. In addition, the IIA endorses end-user empowerment, including education and the provision of information, and content filtering as methods to support and enhance supervision of Internet activity.

1.4 The IGA imposes obligations on ISPs, Interactive Gambling Service Providers, Publishers, Datacasters and Broadcasters for acts or omissions in relation to Internet Gambling Content in certain circumstances. Persons who fail to comply with some obligations may be guilty of an offence against the IGA.

1.5 The IIA has developed this Code in accordance with the expressed intention of Parliament primarily to assist IIA members to comply with the IGA.

2. Objectives

2.1 The aims of this Code include:

(a) to establish confidence in and encourage the use of the Internet;

(b) to provide a mechanism for ISPs to meet their legal obligations in dealing with designated Internet gambling matters; and

(c) to promote positive user relations with the Internet industry.

2.2 In compliance with sub-section 37(2) of the IGA, this industry Code deals with the following designated Internet gambling matters:

(a) the formulation of a designated notification scheme (set out in Clause 5.1 of this code): and

(b) procedures to be followed by ISPs in dealing with Internet content notified under paragraph 24(1)(b) or section 26 of the IGA (set out in Clause 5.2 of this code).

3. Terminology and Interpretation

3.1 In this Code:

"ABA"	means the Australian Broadcasting Authority.
"IGA"	means the *Interactive Gambling Act 2001*.
"Scheduled Filter"	means one of the products or services listed in Schedule 1 of this Code.

"Code"	means this Code of Practice, including Schedule 1.
"Content"	means all forms of information and, without limitation, includes text, pictures, animation, video and sound recording, separately or combined, may include software and includes a "Content Service" within the meaning of the *Telecommunications Act*, 1997.
"Content Provider"	means a person who, in the course of business, makes available the content of a Web Site or database on the Internet and includes: • advertisers • information providers • "content service providers" within the meaning of the *Telecommunications Act*, 1997, but not a person acting in its capacity as an ISP or Internet Content Host, or a person who simply provides an automated general-purpose search engine, cache, catalogue or directory service or similar automated service
"filter"	means to restrict or deny access to a Web Page or other Internet content.
"Internet"	means the public network of computer networks known by that name which enables the transmission of information between users or between users and a place on the network.
"IIA"	means the Internet Industry Association (ACN 071 075 575).
"ISP"	stands for Internet Service Provider and means those persons so defined by the *Broadcasting Services Act,* 1992 (as amended).
"person"	includes partnerships, bodies corporate and the Crown.
"Prohibited Internet Gambling Content"	means that content so defined by the *Interactive Gambling Act* 2001.
"Software"	means computer software.
"Suppliers"	means persons who develop, import, sell or distribute Scheduled Filters, but excludes ISPs who merely provide filters for use in compliance with Clause 5.2 of this Code and do not determine the content or operation of Scheduled Filters.

"User" means a user of the Internet who is resident within Australia.

3.2 In this Code, where examples are provided of the manner in which a Code provision may be satisfied, those examples should not be read as limiting the manner in which the provision may be satisfied.

3.3 For the purposes of registration and replacement of this Code, Schedule 1 forms part of the Code. Scheduled Filters are included on the basis of having met the criteria set out in the schedule.

4. APPLICATION OF THIS CODE

This Code has been developed by the IIA to reflect the approach of its members in satisfying the requirements set out in section 36(1) of the *Interactive Gambling Act 2001* (IGA). The IIA will work to ensure that its members comply with this code. The Australian Broadcasting Authority may direct an ISP to comply with this code if it is satisfied that the ISP has contravened the IGA.

5 ISP OBLIGATIONS IN RELATION TO ACCESS TO CONTENT HOSTED OUTSIDE AUSTRALIA

5.1 Designated notification scheme

For the purposes of this Code and pursuant to the requirements of paragraph 24(1)(b) and section 26 of the Act, a designated notification scheme comprises:

(a) direct notification, whether by means of email or otherwise, by the ABA to the Suppliers of Scheduled Filters of information by which the relevant Prohibited Internet Gambling Content can be identified; and

(b) notification by email by the ABA to ISPs on a regular basis of Prohibited Internet Gambling Content.

5.2 ISP Procedures in Relation to Access to Content Hosted Outside Australia

ISPs must follow the procedure in either paragraph (a) or (b) below with respect to content notified under the Designated Notification Scheme set out in clause 5.1.

(a) ISPs who provide Internet access to subscribers within Australia will, as soon as reasonably practicable for each person who subscribes to an ISP's Internet carriage service, provide for use, at a charge determined by the ISP, a Scheduled Filter.

For the purposes of this paragraph, provision for use includes the provision of a Scheduled Filter as part of:

- an online registration process, and in the case of user installable filters, links to effect download activation and instructions for use;
- a disk based registration process; or
- a notification containing, in the case of user installable filters, links to effect download activation and instructions for use.

(b) In the case of commercial subscribers, the ISP will, as soon as practicable, provide for use, at a charge and on terms determined by the ISP, such other facility or arrangement that takes account of the subscriber's network requirements and is likely to provide a reasonably effective means of preventing access to Prohibited Internet Gambling Content. In this clause, provision for use includes:

- providing appropriate software, including any of the Scheduled Filters; or
- facilitating access to consultancy services with respect to firewalls or other appropriate technology.

5.3 Consistent with sub-section 24(1) and section 27 of the IGA, the ABA will not issue standard access prevention notices or special access prevention notices to ISPs while the designated notification scheme contained in clause 5.1 of this Code is in effect.

5.4 Designated alternative access prevention arrangements

5.5 The arrangements set out in the following paragraphs 5.6 (a), (b) and (c) constitute designated alternative access prevention arrangements for the purposes of sub-section 37(3) of the Act.

5.6 Clause 5.2 of this Code shall have no application in respect of the supply of Internet carriage services by an ISP where an end user is subject to an arrangement that the IIA is satisfied is likely is to provide a reasonably effective means of preventing access to Prohibited Internet Gambling Content; for example:

(a) a commercial subscriber who has advised their ISP that they have in place a form of content filtering or control, whether by means of firewall technology or otherwise;

(b) a school, educational or other institutional subscriber similarly protected; or

(c) any other subscriber who has advised their ISP that he or she already has installed a Scheduled Filter.

5.7 This Code was registered by the ABA on 13 December 2001 and will come into effect for implementation on that date. It will be formally reviewed within 18 months of the date of implementation.

SCHEDULE 1: SCHEDULED FILTERS

1. The filtering products and services in this Schedule may be modified from time to time in the following manner:

   (a) if the IIA believes a product or service should be added to or removed from the list, IIA will in consult with the ABA; and

   (b) if the ABA agrees with IIA the product or service will be added to or removed from the list. Where the ABA does not agree that a product of service be added it will provide a statement of reasons for so doing within a reasonable time.

2. For the purposes of replacement of the industry code, the ABA regards any addition or removal of a filter product or service to this Schedule as differing only in minor respects from the original code. Consequently, the IIA need not follow paragraphs 38(1)(e) and (f) of the IGA when making any such changes.

3. The inclusion of a filtering product or service in this Schedule is subject to the IIA being satisfied of the following criteria:

   (a) ease of installation (where applicable);
   (b) ease of use;
   (c) configurability;
   (d) availability of support; and
   (e) the presence of management systems within commercial filter Suppliers to ensure that ABA updates are actioned and undertakings by those Suppliers to include all notifications made by the ABA under the IGA.

4. A Supplier who asks the IIA to include an Internet filter product or service in this Schedule, or who requests at any time that an Internet filter product or service remain in this Schedule, must supply the following information:

   (a) the contact point to which the ABA should send notifications about content;
   (b) the minimum information to be contained in notifications from the ABA to enable the Supplier to give effect to notifications by updating their Internet filter product or service;
   (c) an outline of the process involved in updating the Internet filter product or service;
   (d) the expected maximum time it will take to give effect to the notification;
   (e) the means by which an end-user of the Internet filter product or service may obtain and implement a version updated as a result of the notification; and
   (f) the steps to be taken by the manufacturer or their agent to preserve the confidentiality of information contained in notifications they receive from the ABA.

5. The following filter products and services are currently recognised for use under this Code:

- AOL Parental Control
- Arlington Custom Browser
- Cyber Patrol
- Cyber Sentinel
- CyberSitter
- EyeGuard
- Internet Sheriff
- Igear
- InterScan WebManager N2H2
- NetNanny
- Norton Internet Security Family Edition
- Smart Filter
- Too C.O.O.L
- XStop
- Xstop R2000